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06 UNITED STATES DISTRICT COURT
07 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

08 RICKY M. ARNTSEN,) CASE NO. C07-1967-JCC-MAT
09 Plaintiff,)
10 v.) ORDER STRIKING PLAINTIFF'S
11 STEVEN CLARK, et al.,) MOTION FOR ORDER
12 Defendants.) INSTRUCTING JAIL TO PROVIDE
ACCESS TO LIBRARY
_____)

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14 Plaintiff is incarcerated in the Snohomish County Jail in Everett, Washington. He has
15 submitted a *pro se* complaint pursuant to 42 U.S.C. § 1983, alleging that prior to his present
16 incarceration, his constitutional rights were violated by two Seattle police officers. (Complaint
17 at 2-7). In his complaint, plaintiff names these officers as defendants and also names the Seattle
18 Police Department ("SPD") as a defendant. On January 7, 2008, the Court issued an Order (Dkt.
19 No. 10) advising plaintiff that SPD may not be held responsible for the acts of its employees under
20 a *respondeat superior* theory of liability. *See Collins v. City of Harker Heights*, 503 U.S. 115,
21 121 (1992). The Court directed plaintiff to file an amended complaint within 30 days because he
22 had failed to allege that any constitutional deprivation he suffered was the result of a "custom or

01 policy” of SPD. *See Board of County Comm’rs v. Brown*, 117 S. Ct. 1382, 1388 (1997).

02 On January 15, 2008, plaintiff filed a motion for an Order that would direct the Snohomish
03 County Jail (“Jail”) to provide him with access to the Jail’s law library. (Dkt. No. 11). Having
04 reviewed the motion, and the balance of the record, the Court does hereby find and Order as
05 follows:

06 (1) Plaintiff asserts that the Jail is unwilling to grant him access to its law library
07 because it limits such access to two categories of inmates: (1) those who are representing
08 themselves in a criminal case; and (2) those who are representing themselves in a civil action in
09 which the inmate is challenging conditions of his confinement. (Dkt. No. 11, Attachment B).
10 Because the instant lawsuit involves alleged constitutional violations that occurred before
11 plaintiff’s current incarceration, he does not qualify to use the law library under either of these two
12 standards.

13 Plaintiff argues that the Jail’s restrictive policy violates his rights under the First and
14 Fourteenth Amendments. (Dkt. No. 11 at 4). However, the Court need not reach the merits of
15 this question. The Jail is not a defendant in this action. “A court ordinarily does not have power
16 to issue an order against a person who is not a party and over whom it has not acquired in
17 personam jurisdiction.” Wright, Miller, & Kane, *Federal Practice and Procedure: Civil 2d* §
18 2956 at 335 (West 1995). Therefore, the Court cannot direct the Jail to provide library access to
19 plaintiff.

20 The Court makes two additional observations: First, in the previous Order directing
21 plaintiff to amend his complaint, the deficiency cited by the Court was plaintiff’s failure to make
22 any specific allegations that any constitutional deprivation he suffered was the result of a “custom

01 or policy” of SPD. This issue pertains to the *facts* underlying the case and thus does not require
02 plaintiff to conduct further legal research. Accordingly, plaintiff should be able to file an amended
03 complaint even if his access to the Jail’s law library is restricted.

04 Second, if plaintiff wishes to pursue the law library issue further, he is advised to file a
05 separate action against the proper defendants. The present action is grounded upon allegations
06 of police misconduct which arose prior to plaintiff’s present incarceration and which are wholly
07 unrelated to the law library matter. If the library issue were presented here, it would likely be
08 subject to severance by the Court. *See* Fed. R. Civ. P. 42(b); *Davis v. Mason Co.*, 927 F.2d 1473,
09 1479 (9th Cir. 1991), *overruled on other grounds*, *Davis v. City and Co. of San Francisco*, 976
10 F.2d 1536 (9th Cir. 1992).

11 (2) Accordingly, in light of the above, the Clerk shall STRIKE plaintiff’s motion (Dkt.
12 No. 11) for an Order directing the Jail to provide access to its law library. Plaintiff’s related
13 motion (Dkt. No. 7) is DENIED as moot.

14 (3) The Clerk shall send a copy of this Order to plaintiff, to counsel for defendants, and
15 to Honorable John C. Coughenour.

16 DATED this 18th day of January, 2008.

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18 Mary Alice Theiler
19 United States Magistrate Judge
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